

ORDINANCE NO. 20110526-095

AN ORDINANCE AMENDING CHAPTER 9-3 OF THE CITY CODE RELATING TO NON-EMERGENCY CURFEWS; AND CONTINUING AND READOPTING THE PROVISIONS OF CHAPTER 9-3.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 9-3 of the City Code, (*Non-Emergency Curfews*) is amended to read as follows:

CHAPTER 9-3. NON-EMERGENCY CURFEWS.

§ 9-3-1 DEFINITIONS.

In this chapter:

(1) DIRECT ROUTE means the shortest path a person may travel through a public place to reach the person's destination without a detour or additional stop at any other destination along the way.

~~(2) DOWNTOWN ENTERTAINMENT DISTRICT CURFEW AREA means that area bounded by the south curb of Tenth Street, the east curb of the IH-35 West Frontage Road, the south curb of Fourth Street, the east curb of Congress Avenue starting at Fourth Street, south to the south curb of Second Street (West), the west curb of San Antonio Street, north to the south curb of Fourth Street (West), west to the west curb of Nueces Street, the north curb of Seventh Street (West), and the west curb of Congress Avenue.]~~

(2)[(3)] EMERGENCY means an unforeseen circumstance including a fire, natural disaster, automobile accident, or the need to obtain immediate medical care for another person.

(3)[(4)] ESTABLISHMENT means a privately owned place of business operated for a profit to which the public is invited, including a place of amusement or entertainment.

(4)[(5)] JUVENILE means a person under 17 years of age.

(5)[(6)] OPERATOR means an individual, firm, association, partnership, or corporation operating, managing, or conducting an establishment, including a member or partner of an association or partnership and an officer of a corporation.

(6)[(7)] PARENT means a person who is the natural or adoptive parent of a juvenile, including a court-appointed guardian or other person 21 years of age or older, authorized by a parent, court order, or court-appointed guardian to have the care and custody of a juvenile.

~~(7)~~~~(8)~~ PUBLIC PLACE means a public street, alley, highway, sidewalk, playground, park, plaza, building, or place used or open to a member of the public; or a building, business, or amusement or entertainment establishment.

~~(8)~~~~(9)~~ RELIGIOUS ACTIVITY means a function or event sponsored by a religious organization that has received tax exemption under Section 501(C)(3) of U.S.C.

§ 9-3-2 OFFENSES.

(A) A juvenile commits an offense if the juvenile is in a public place or on the premises of an establishment [~~in the Downtown Entertainment District Curfew Area~~] between 11:00 p.m. and 6:00 a.m. on any day.

~~[(B) — Except as provided in Subsections (C) and (D), a juvenile commits an offense if the juvenile is in a public place or is on the premises of an establishment between 11:00 p.m. and 6:00 a.m. on Sunday through Thursday or between midnight and 6:00 a.m. on Saturday and Sunday.]~~

~~[(C) — Except as provided in Subsection (D), if the following day is an Austin Independent School District holiday, curfew hours are the same as on Saturday and Sunday. During the regular Austin Independent School District summer recess, curfew hours are the same as an Austin Independent School District holiday.]~~

~~[(D) — Subsections (B) and (C) do not affect the curfew established under Subsection (A).]~~

~~(B)~~~~(E)~~ While school is in session, a juvenile commits an offense if the juvenile remains, walks, runs, idles, wanders, strolls, or aimlessly drives or rides about in or on a public place between 9:00 a.m. and 2:30 p.m. on Monday, Tuesday, Wednesday, Thursday or Friday.

~~(C)~~~~(F)~~ A parent having custody of a juvenile commits a violation if the person knowingly allows the juvenile to be in violation of this chapter. A parent is presumed to knowingly allow or permit the juvenile to be in violation of this chapter if the juvenile has two previous convictions for violations of this chapter. For the purpose of this section a deferred adjudication is a conviction.

~~(D)~~~~(G)~~ The owner, operator, or employee of an establishment commits an offense if the person knowingly allows a juvenile to remain on the premises of the establishment during curfew hours.

§ 9-3-3 DEFENSES.

(A) It is a defense to prosecution under Section 9-3-2 (*Offenses*) that:

- (1) the juvenile is accompanied by the juvenile's parent or spouse;
- (2) the juvenile is on an errand authorized by the juvenile's parent or spouse or made necessary by an emergency;
- (3) except as provided in Subsection (C), the juvenile is traveling by a direct route [~~through a curfew area or~~] to the juvenile's home [~~in a curfew area~~];
- (4) the juvenile is in a vehicle involved in transportation for which passage through the city [~~a curfew area~~] is the most direct route;
- (5) the presence of the juvenile is connected with or required by a religious activity, educational activity, or a business, trade, profession, or occupation in which the juvenile is lawfully engaged;
- (6) except as provided in Subsection (C), the juvenile is on the sidewalk in front of the juvenile's residence or on the sidewalk of either adjacent neighbor who is not communicating an objection to the presence of the juvenile to a police officer; or
- (7) the juvenile is exercising First Amendment rights protected by the United States Constitution, including the free exercise of religion, freedom of speech, and the right of assembly.

(B) It is a defense to a violation of Subsection 9-3-2 ~~(B)~~ [(E)] (*Offenses*) that:

- (1) the school that the juvenile attends is not in session;
- (2) the juvenile is a high school graduate or has an equivalent certification; or
- (3) the juvenile is on an excused absence from the juvenile's school.

(C) Subsections (A)(3) and (A)(6) are not defenses to a violation of Subsection 9-3-2 ~~(B)~~ [(E)] (*Offenses*).

(D) It is a defense to prosecution under Subsection 9-3-2 ~~(D)~~ [(G)] (*Offenses*) that the owner, operator, or employee of an establishment promptly notified the Police Department that a juvenile was present on the premises of the establishment during curfew hours and refused to leave after being requested to do so by the owner, operator, or employee.

§ 9-3-4 ENFORCEMENT PROCEDURE.

The Police Department shall adopt enforcement procedures in compliance with Chapter 52 (*Proceedings Before and Including Referral to Juvenile Court*) of the Texas Family Code.

§ 9-3-5 PENALTY.

(A) A juvenile who violates this chapter commits a Class C misdemeanor.

(B) A person not a juvenile who violates this chapter commits a Class C misdemeanor, punishable by a fine of not less than \$50.

§ 9-3-6 EXPIRATION.

This chapter shall expire if it is not reviewed and readopted every three years as prescribed by Chapter 370 (*Miscellaneous Provisions Relating to Municipal and County Health and Public Safety*) of the Texas Local Government Code.

PART 2. Austin City Code Chapter 9-3, (*Non-Emergency Curfews*), as amended by this ordinance, is readopted and continued in effect.

PART 3. This ordinance takes effect on June 18, 2011.

PASSED AND APPROVED

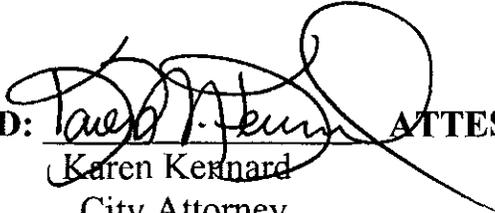
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Lee Leffingwell

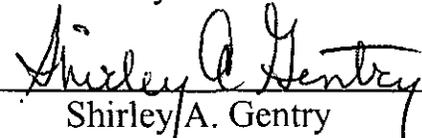
Mayor

APPROVED:



Karen Kennard
City Attorney

ATTEST:



Shirley A. Gentry
City Clerk